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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th June 2006

No.4524-li/1(BH)-9/2001(Pt.)/L.E.— In pursuance of section-17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 27th March 2006 in I.D. Case No.43/2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of Executive Engineer, Rairangpur Electrical Division, At/P.O.- Rairangpur, Dist.- Mayurbhanj and its workman Sri Arjun Mathia, C/o the Working President, O.S.E.B. Workers, Union, Union Office, Thermal Colony, At/P.O./Dist.-Balasore was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT: BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 43 of 2002

Dated the 27th March 2006

Present:

Shri P. K Sahoo, O.S.J.S. (Jr.Branch)
Presiding Officer,
Labour Court.
Bhubaneswar.

Between:

The Executive Engineer,
Rairangpur Electrical Division,
At/P.O.-Rairangpur,
Dist-Mayurbhanj.

...First Party— Management

AND

Sri Arjun Mathia,
C/o the Working President,
O.S.E.B. Workers, Union,
Union Office, Thermal Colony,
At/P.O./Dist.-Balasore

...Second Party— Workman

Appearances :

Shri S.K.Panda

...For First Party— Management

Shri G.K.Mohapatra

...For Second Party— Workman

AWARD

The State Government in exercise of powers conferred by sub-section (5) of section 12 read with clause (c) of sub-section (1) of section-10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo No.3764(5)/L.E., dated the 16th March 2002 for adjudication and Award.

2.The terms of reference may briefly be stated as follows:—

“Whether the termination of services of Shri Arjun Mathia, Sweeper, Contingent Workman with effect from 1st October 1998 by the Executive Engineer, Rairangpur Electrical Division, Rairangpur is legal and/or justified ? If not, to what relief the workman is entitled ?”

3.Workman Arjun Mathia by way of this reference has challenged the legality and justifiability of the action of the management of Executive Engineer, Rairangpur Electrical Division, Rairangpur (in short the management) in terminating his services with effect from 1st October 1998.

Matrix of the necessary facts as bear on the controversy involved in the present case is that the workman concerned was engaged by the management as sweeper, contingent workman with effect from 1985. He continued to work as such till 30th September 1998. It is stated in the statement of claim that he had rendered continuous service since the date of his engagement till he was terminated from service with effect from 1st October 1998. According to the workman, although he had discharged his duties with much sincerity, devotion and to the utmost satisfaction of the authorities but the management without any rhyme or reason terminated him from service without following the mandate of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). While seeking industrial adjudication the workman has prayed for his reinstatement in service with back wages. Hence the reference.

4.The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that he had not worked continuously and had not completed 240 days of service in terms of the statutory provisions of the Act. He had been engaged on contingency basis and as and when need was felt, services were taken on daily wage basis. Since the workman had not worked for more than 240 days in a calendar year, the provision of section 25-F of the Act were not attracted and there was no question of payment of compensation. Therefore, the workman is not entitled for any relief. On the above back grounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed.

ISSUES

(i) Whether the termination of services of Sri Arjun Mathia, Sweeper, Contingent Workman with effect from 1st October 1998 by the Executive Engineer, Rairangpur Electrical Division, Rairangpur is legal and/or justified ?

(ii) If not, to what relief the workman is entitled ?

6. The workman in support of his case has examined himself as W.W.1 and another witness namely, Girish Kumar Mohapatra, as W.W.2 but has not relied upon any document. On the other hand, the management has examined one Sanjay Kumar Panda as M.W.1 and has also not relied upon any document in support of its case.

FINDINGS

7. Issue Nos. (i) and (ii) :—For better appreciation and adjudication of the dispute under reference both the above issues are taken up together.

The perusal of the evidence of the workman emerges that he joined in the establishment of the management in the year 1985 and worked till 30th September 1998. The management without giving notice or notice pay and retrenchment compensation terminated him from service with effect from 1st October 1998. He admits during cross-examination that neither any appointment order nor any termination order was issued to him. He further admits that he has not filed any document to show that he was working under the management for the above said period. The further admitted evidence is that no document regarding receipt of wages has also been filed by him in this case. It has been suggested to him that he had not worked continuously from 1985 to 30th September 1998 and that he had not completed 240 days of service in a year preceding the date of termination to which he has replied in the negative. It appears from the evidence of W.W 2 that the workman had worked under the management from 1990 to 30th September 1998 and had discharged his duties with much sincerity but when he demanded the minimum wages, his services were terminated with effect from 1st January 1998. As per his knowledge the retrenchment benefits were not paid to him at the time of termination. He admits during cross-examination that he has not seen any document regarding the engagement of the workman under the management for the above period. It has been suggested to him that the workman was not a regular employee and that he was working on contingency basis and was paid his wages for the days he had worked and that he is not entitled to be reinstated in service with back wages to which he has categorically denied. The evidence led by the management through M.W.1 clearly shows that the workman was working as Sweeper under the management with effect from 1st February 1990 on contingency basis and continued to work as such under the

management intermittently till 30th September 1998. He has categorically stated that the workman had never worked continuously for 240 days in a year and also he had not completed 240 days of service in the year preceding the date of termination. It is also in his evidence that neither any order of appointment nor any termination order was issued to him. He was simply working under the management on contingency basis and was paid his wages for the days he had worked. He has further stated that the workman was not a regular employee under the management and had not worked continuously as claimed by him. Therefore, he is not entitled to be reinstated in service with back wages. M.W.1 has been cross-examined by the workman at length but the evidence in cross-examination is not scattered by the workman during cross-examination. Nothing material and substantial has also been elicited by the workman during evidence to discard his evidence.

8. Both the management and the workman have adduced evidence in support of their respective cases. From the above discussion the principal issue thus appears to be as to whether the workman has completed 240 days of service in terms of the statutory provisions of the Act. The Hon'ble Apex Court in the matter of between Forest Range Officer and S.T. Hadimoni reported in 2002(94) FLR 622 Supreme Court, Utter Pradesh Abha Sevam Vikas Parisad and Kanak and another reported in 2003(96) FLR 492 Supreme Court and in the matter between Rajasthan State Ganganagers Mills Ltd. and State of Rajasthan and another reported in 2004(103) FLR 192 Supreme Court has consistently taken the view that:

"It is for the employees concerned to prove that he has in fact completed 240 days in the last preceding twelve months period. The burden was upon the workman to prove that he had worked 240 days as claimed."

Admittedly the requirement of the statute cannot be disputed and it is for the workman concerned to prove that he has in fact completed 240 days in the last preceding twelve months period. The Hon'ble Apex Court in the recent judgement in the case of Chief Engineer, Construction Vrs. Keshava Rao(D) by L.Rs. reported in 2005-II-LLJ 479(Supreme Court) and in the case of Manager, R.B.I., Bangalore Vrs. S. Mani and others reported in 2005-II-LLJ 258 (Supreme Court) has taken the view that :

"The initial burden of establishing factum of continuous work for 240 days within a year was on the workman."

In the case at hand, the stand taken by the management before this Court that the workman had never worked continuously for more than 240 days as a regular employee therefore, with regard to the termination of the workman, the provision of retrenchment are not attracted and the management was not under obligation to comply with the provision of section 25-F of the Act and therefore, the workman is not entitled for any relief. On the other hand, the claim of the workman before this Court is that he had rendered service with effect from 1985 till

30th September 1998 but the management without any rhyme or reason terminated his services without following the mandate of section 25-F of the Act. According to the workman as he has completed 240 days of continuous service in terms of the statutory provisions of the Act, he is entitled to be reinstated in service with back wages since the provisions of section 25-F of the Act have not been complied with in the case of his termination. But on careful scrutiny and analysis of the evidence of the workman it is seen that nowhere it has been elicited that he had worked more than 240 days of continuous service in terms of the statutory provisions. Rather it is admitted by the workman that he has no document with him to show that he had worked from 1985 till 30th September 1998. It is therefore, clearly evident that the workman has totally failed to establish that he had worked for 240 days in the year preceding his termination. In absence of any clear and cogent evidence the mere oral statement given by the workman cannot be regarded as sufficient and substantive evidence to come to a conclusion that he had infact worked for 240 days in a year. Even no proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for the above period has been produced by the workman. Therefore the claim of the workman to the effect that he had completed 240 days of service in terms of the statutory provisions of the Act cannot be safely accepted. On the whole, after carefully examining the evidence tendered by the parties and keeping in view the settled position of law, I am of the considered opinion that the burden has not successfully been discharged by the workman in the present case. I am therefore, led to hold that the workman has miserably failed to substantiate his case with regard to his continuous engagement having been rendered by him for the above period in the establishment of the management in terms of statutory provisions of the Act. In that view of the matter, the workman is not entitled for any relief as prayed for.

The reference is thus answered accordingly.

Dictated & corrected by me.

P.K.SAHOO
Dt.27-03-2006,
Presiding Officer,
Labour Court,
Bhubaneswar

P.K.SAHOO
Dt.27-03-2006,
Presiding Officer,
Labour Court,
Bhubaneswar

By order of the Governor

N.C. RAY
Under- Secretary to Government